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Attorneys for Defendant Temujin Labs Inc.  
(Delaware)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ARIEL ABITTAN,

Plaintiff,

v.

LILY CHAO (A/K/A TIFFANY CHEN, A/K/A  
YUTING CHEN), DAMIEN DING (A/K/A  
DAMIEN LEUNG, A/K/A TAO DING),  
TEMUJIN LABS INC. (A DELAWARE  
CORPORATION), AND TEMUJIN LABS INC.  
(A CAYMAN CORPORATION),

Defendants,

and

EIAN LABS INC.,

Nominal Defendant.

Case No.: 5:20-cv-09340

**DEFENDANT TEMUJIN LABS INC.  
(DELAWARE)'S REPLY  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
REQUEST FOR JUDICIAL NOTICE  
AND NOTICE OF DOCUMENTS  
INCORPORATED BY REFERENCE IN  
SUPPORT OF MOTION TO DISMISS  
COMPLAINT**

Judge: Hon. Nathanael Cousins

1 Defendant Temujin Labs Inc. (Delaware) (“Temujin Delaware”) respectfully submits this  
 2 Reply Memorandum of Points and Authorities in Support of its Request for Judicial Notice and  
 3 Notice of Documents Incorporated by Reference in Support of Motion to Dismiss Complaint  
 4 (ECF No. 38).

5 Plaintiff opposes Temujin Delaware’s request that the Court consider six documents in  
 6 conjunction with its motion to dismiss – four under the judicial notice doctrine and two under the  
 7 incorporation by reference doctrine – and in so doing inexplicably *fails to discuss any of the*  
 8 *documents or their contents*, much less elaborate why any of them specifically should not be  
 9 considered. Opp. at 2, n.2; ECF Nos. 37-38. Plaintiff cites *Khoja v. Orexigen Therapeutics, Inc.*,  
 10 899 F.3d 988 (9th Cir. 2018) for various high-level cautionary statements about the use of  
 11 documents pursuant to judicial notice and incorporation by reference, but at no point provides an  
 12 explanation how any of the documents at issue run afoul of those doctrines. Opp. at 2 n.2.

13 Plaintiff’s aversion to specifics is not surprising, as an examination of the documents and  
 14 the purposes for which they are being submitted decisively demonstrate that none are  
 15 controversial or discouraged under *Khoja*. Exhibits A and B to the Bretan Declaration (ECF No.  
 16 37) are publicly available government records offered solely to demonstrate that the two company  
 17 defendants were incorporated on July 2, 2019. ECF No. 38 at 1-3. Plaintiff makes no effort to  
 18 dispute the authenticity or accuracy of this information, which dooms Plaintiff’s attempt to  
 19 oppose consideration of these documents. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-  
 20 99 (9th Cir. 2010) (“It is appropriate to take judicial notice of this information, as it was made  
 21 publicly available by government entities...and neither party disputes the authenticity of the web  
 22 sites or the accuracy of the information displayed therein.”).

23 Exhibits E and F are public court filings offered solely to demonstrate the existence of an  
 24 earlier-filed related case and the stayed answer deadline therein. *Id.* at 2-3. Courts routinely take  
 25 judicial notice of such information, and Plaintiff makes no effort to distinguish any of relevant  
 26 authorities in Temujin Delaware’s request that definitively justify consideration of these  
 27 documents. *See, e.g., United States Small Bus. Admin. v. Bensal*, 853 F.3d 992, 1003 n.3 (9th Cir.  
 28 2017) (judicial notice of public government documents); *Reyn’s Pasta Bella, LLC v. Visa USA*,

1 *Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (judicial notice of filings in other litigation).

2 Similarly, unlike the materials in *Khoja* (e.g., analyst reports, blog posts), Exhibits C and  
 3 D are contracts pertaining to assets Eian sold, are referred to extensively in the Complaint, and  
 4 form the basis of Plaintiff's claims, and so are incorporated by reference. *See Knievel v. ESPN*,  
 5 393 F.3d 1068, 1076 (9th Cir. 2005) (incorporation by reference appropriate where ("plaintiff's  
 6 claim depends on the contents of a document, the defendant attaches the document to its motion  
 7 to dismiss, and the parties do not dispute the authenticity of the document[.]"). These materials  
 8 are offered solely to demonstrate "the fact of and contents" of those documents and may be  
 9 considered here. ECF No. 38 at 3 (citing *In re Bare Escentuals, Inc. Sec. Litig.*, 745 F. Supp. 2d  
 10 1052, 1066 (N.D. Cal. 2010) (appropriate to consider exhibits referenced and relied upon in  
 11 complaint); *Cement Masons & Plasterers Joint Pension Trust v. Equinix, Inc.*, 2012 WL 685344,  
 12 at \*5 n.4 (N.D. Cal. Mar. 2, 2012) (same)). Plaintiff makes no specific argument to the contrary.

13 For all of the foregoing reasons, the Court should grant Temujin Delaware's request.

14 Dated: June 18, 2021 FENWICK & WEST LLP

15 By: /s/ Jennifer Bretan  
 16 Jennifer Bretan

17 Attorneys for Defendant Temujin Labs Inc.  
 18 (Delaware)  
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